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13 FACEBOOK, INC.

14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16
17 SAMBREEL HOLDINGS LLC; YONTOO LLC;
and THEME YOUR WORLD LLC,

18 Plaintiffs,

19 vs.

20 FACEBOOK, INC.,

21 Defendant.

CASE NO. 12-CV-00668-CAB-KSC

**DECLARATION OF CRAIG CLARK
IN SUPPORT OF DEFENDANT
FACEBOOK, INC.'S MOTION TO
DISMISS COMPLAINT PURSUANT
TO FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(3) AND 12(B)(6)**

Judge: Hon. Cathy Ann Bencivengo
Hearing Date: June 22, 2012
Hearing Time: 2:30 p.m.
Dept.: Courtroom 2

1 I, Craig Clark, declare:

2 1. I am employed by Facebook, Inc. ("Facebook") as Lead Litigation Counsel. I have
3 personal knowledge of the following facts, except where I indicate my knowledge is on information
4 and belief. If called to testify as a witness, I would testify as follows:

5 2. A true and correct copy of Facebook's Terms of Use (titled "Statement of Rights and
6 Responsibilities") currently in effect is attached hereto as Exhibit A. These Terms of Use have been
7 in effect since April 26, 2011. A true and correct copy of Facebook's Advertising Guidelines
8 currently in effect is attached hereto as Exhibit B. A true and correct copy of Facebook's Platform
9 Terms for Advertising Providers currently in effect is attached hereto as Exhibit C.

10 3. All Facebook users agree to the Terms of Use when they complete the account
11 registration process and through their continued use of Facebook. Additionally, to create a presence
12 on a Facebook to promote a company, brand, service, etc., account holders specifically agree to
13 Facebook's Pages Terms, which include Facebook's Terms of Use.

14 4. Sambreel Services LLC is currently using Facebook in connection with its business
15 and to promote recruiting and products for "Sambreel" through links from this page to its website.
16 For example, Elaine Low created a Facebook Page titled "Sambreel Services LLC" on September 5,
17 2011 and Arie Trouw -- the CEO of Sambreel Holdings LLC according to his Declaration in support
18 of Sambreel's motion for a preliminary injunction -- is one of three administrators of this Facebook
19 Page. A true and correct copy of this Facebook Page is available at
20 <https://www.facebook.com/pages/Sambreel-Services-LLC/259788267376568> and is attached hereto
21 as Exhibit D. On information and belief, Ms. Low was a Sambreel employee at the time she created
22 this Facebook Page.

23 5. Additionally, on September 20, 2011, Ms. Low created a Facebook Page titled
24 "Recruiting at Sambreel Services," and Shawn Bridgeman is an administrator of that Facebook Page.
25 A true and correct copy of the "Recruiting at Sambreel Services" Facebook Page is available at
26 <https://www.facebook.com/RecruitingAtSambreelServices> and is attached hereto as Exhibit E. On
27 information and belief, Ms. Low was a Sambreel employee at the time she created this Facebook
28 Page and Ms. Bridgeman is or was an employee of Sambreel Services LLC.

1 6. Attached hereto as Exhibit F is a true and correct printout copy of the Sambreel
2 Services LLC LinkedIn page at http://www.linkedin.com/company/sambreel-services-llc/products?trk=tabs_biz_product.
3

4 7. On information and belief, Plaintiffs' employees maintain Facebook accounts to
5 conduct work within the scope of their employment with plaintiffs, including for promotion of their
6 PageRage products. For instance, Plaintiffs provide content at pagerage.com with tutorials and other
7 information that depict the use of Facebook accounts with their software. A true and correct copy of
8 these materials is attached hereto as Exhibit G.

9 8. On information and belief, Plaintiffs' employees also lead video tutorials on YouTube
10 describing the process for downloading PageRage using it with Facebook accounts. In one such
11 video, dated March 31, 2011, entitled "How to Install PageRage for Facebook Layouts Using
12 Google Chrome," an instructor begins by stating: "Hello and welcome to PageRage video tutorials "
13 She later goes on to say: "First step is to go toPageRage.com and **our** full website url is
14 www.pagerage.com." The video depicts the computer screen that appears to track the instructor's
15 key strokes as she walks through the installation process providing oral instruction as she goes.
16 Once she has installed PageRage and selected a layout, she logs into an active Facebook account
17 using the login email pageragefblayouts@gmail.com. Internal records show that the account
18 associated with pageragefblayouts@gmail.com was active as least as late as January 2012.

19 9. Attached as Exhibit H is a true and correct screenshot of the video at the point when
20 the instructor is logging into the Facebook account used to promote this PageRage product.

21 10. Attached Exhibit I is a true and correct screenshot of the video depicting the
22 instructor logged into that Facebook account.

23 11. There are at least three additional PageRage YouTube tutorial videos in which a
24 Sambreel instructor accesses an active Facebook account using with the login email
25 pageragefblayouts@gmail.com. See <http://www.youtube.com/watch?v=OfdyxKAnzN8> dated
26 August 22, 2011 (in which the instructor logs into facebook.com at 1:54);
27 <http://www.youtube.com/watch?v=iAiBZmFuV2Y> also dated August 22, 2011 (in which the
28

1 instructor logs into facebook.com at 1:31); and http://www.youtube.com/watch?v=F5XO0Pah3_o -
2 dated May 4, 2011 shows pageragefblayouts@gmail.com (in which the instructor logs into
3 facebook.com at 2:38). In each video, the instructor uses the same pageragefblayouts@gmail.com
4 email address to log into the Facebook account.

5 12. That Facebook account could not have been created without agreeing to Facebook's
6 Terms of Use and the video clearly depicts the account being used for the promotion of Plaintiffs'
7 PageRage product as late as August 2011.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed on April 4,
9 2012, at Menlo Park, California.

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SAMBREEL HOLDINGS LLC et al v. FACEBOOK, INC

United States District Court for the Southern District of California

Case No. 12-cv-00668-CAB-KSC

Index to Exhibits to the April 4th, 2012 Declaration of Craig Clark

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A.	Facebook Statement of Rights and Responsibilities, eff. Apr. 26, 2011	1
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C.	Facebook Platform Terms for Advertising Providers, eff. Dec. 16, 2010.	11
D.	Screenshot of the "Sambreel Services LLC" Facebook Page, available at https://www.facebook.com/pages/Sambreel-Services-LLC/259788267376568 .	14
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CERTIFICATE OF SERVICE

The undersigned hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the **DECLARATION OF CRAIG CLARK IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S MOTION TO DISMISS COMPLAINT PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(B)(3) AND 12(B)(6)** via the CM/ECF system on April 4, 2012.

DATED: April 4, 2012

By: s/ James F. Basile
James F. Basile